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File No. Coop. II 51 (N)

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Legal Department
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Subject:— Notifications under the Bombay Cooperative Societies Act, 1925

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Legal Department.

...rovided draft notification is sent ...rewith.

... It is sufficient compliance with the ... section 37 (...) of the Company ... Act, 1956, if the ... of companies are included in the ... notification. It is not necessary to specify ... particulars of the banks in the ... of investments in any company ... if any particulars are found to be ... incorrect the notification will require ... amendment.

... for the notification issues, the ... Department should ascertain whether the Central Registrar has approved the Imperial Bank of India and the Central Bank of India as the banks for the purposes of clause (d), ... section 3 of the Act. If so, the names of of two banks may be omitted.

Secretary to Government.

... to ... No. 417, dated the 14th March 1961.

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The proposal to amend the Act in the sense suggested by the Registrar, Cooperative Societies will not serve any useful purpose, for there is no point in having a statutory provision to the effect that the Official Gazette should publish a notification saying that the list of societies is published elsewhere separately. It will be sufficient, if, as soon as a society is registered or a society's registration is cancelled, that fact is published in the Official Gazette. Such publication will then be judicial notice under the Indian Evidence Act.

Remembrancer of Legal Affairs.

U.R. to D.D. No. 4347, dated the 16th March 1951.

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Office of the R.L.A.

revised draft notice is sent herewith subject to the following observations:-

The notice should issue under the signature of the ecretary to Government, Development partment (or any other officer authorized under the Rules of Business) as the notice is to be given by the State Government.

2. The fact that the society was not indebted to any Central financing agency has been brought out in the order. Item (iv) specified in the notice should be expanded so as to give an idea as to what was the nature of the fault committed by the Managing Committee with respect to the particular item. The object is that the whole Committee should explain its position the notice should be served on the Hon. Secretaries of the Society. Under by-law 44(iii) of the Society the Secretaries are empowered to receive applications, letters etc. and to place them before the Committee. In addition to the notice to be sent to the Secretaries, a copy may be sent to the Chairman of the Committee also.

In accordance with the advice of the Advocate General Conveyed in the letter of Messrs. Little & Co., notice as in the appended draft may issue to the present Committee. About 10 days' time may be given to the Committee to submit its explanation.

Remembrancer of Legal Affairs.

U.R. to D.D., No. 6204, dated the 10th April 1951.

Awardees paying instalments towards Share Capital regularly;

And whereas the said society is not indebted to any Central Financing Agency;

Now, therefore, the Managing Committee of the said Society is hereby called upon to show cause why an order should not be made under Rule 48 of the Bombay Co-operative Societies Rules, 1927, removing all the following members from the office as members of the Managing Committee of the Society.

(1) Shri V.V. Mirdohswar, Chairman,

(2) " S.V. Betrabet, Vice-Chairman,

(3) " S.M. Gokran, Secretary.

(4) " U. Sunder Rao, Secretary,

(5) " S.L. Naravi,

(6) " S. Anant Rao.

(7) " S.A. Adur,

(8) " M.V. Kashittal.

Any objection to the proposed order received by the Secretary to the Government of Bombay, Development Department, from the aforesaid Committee on or before .....April, 1951 will be duly taken into consideration by Government before passing final orders.

By orderof the Governor of Bombay,

Secretary to Government.

Notice under No. rule 4[illegible] of the Bombay Co-operative Societies Rules, 1925.

It has come to the notice of Government that the managing committee of the Saraswat Saburban Co-operative Housing Society, Ltd., Santacruz, consisting of the members mentioned below has acted high handedly and arbitrarily and overall of its action, as indicated below, are illegal and irregular and the Society has to suffer heavy loss by the action of the managing committee :-

(i) Transfer of shares from non-resident members which is against the interest of the institution (loss estimated to be Rs. 50,000/-).

(ii) Reduction of rents for four years which has benefitted mostly the members of the managing committee, their friends and relatives.

(iii) Share capital of Rs. 5,200 returned without reasonable grounds and irregularly to non-resident members.

(iv) New loan of Rs. 75,000 floated.

(v) Interest charges on Rs. 50,000 (referred to at (i) and on Rs. 55, 200 referred to at

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(vi) Refusal to appear before the Registar of C.S. either in Bombay on 28-1-50 or earlier at Poona and to produce requisitioned documents.

Deputy Registrar, C.S., Surat, on 7 February 1947, as could be evidenced form the notice dated the 9th August 1948 issued by the Honourar Secretary of the Society to Mr. Vakmalli and others.

(viii) Failure to give effect to the Resolution passed a Special General Meeting held on 4th July 1948 regarding the acceptance of share capital at the rate of 0-2-0 per share and remission of interest in case of Awardees

Office of the R.L.A.

The draft by-laws at pages 5 to 57 ante are examined from the legal point of view.

2. The following observations ar made with referenceto the by-laws referred to in Development Department note at pages 1 to 4 ante:-

By-laws 2(e), 70 and 80 - The difficulty pointed out by Shri Dhat in his n.te with reference to by-laws 2(e), 70 and 80 can be solved if t'e following procedure is followed:-

In the draft Bill which has een supplied to the Development Department and in which it is intended that a banking company or a company or a firm should become a member of a Coperative Society, section 18 of the Co-.perative Societies Act as proposed to be amended would provide that a company, which has invested any part of its fund in the shares of a society may appoint any one of its directors or officers to vote on its behalf in the affairs of such society. By-law 71 should, therefore, provide that the Director to be elected by the banks or by the insurance company or by the cooperative societies or by the co-operative housing societies should necessarily be a director or officer of the insurance company or scheduled bank or co-operative society which is member of the Bombay Co-op.rative Housing Finance Society Ltd. If such a provision is made, the directors would automatically be able to attend gene al meetings and to vote and act at such meetings. In that case it is not necessary to define the expression "General Body". It appears from=

from draft by law 70(a) that the directors to be nominated by Government under dr ft by law 71A shall have no right to vote at such meetings. It is presumed that this provision has been accepted by the Government. If so, it is not necessary also ti include the representative nominated by Government within the expression "General Body" as is done in the draft by law 7(c). If the above procedure is accepted, clause (e) of by law 80 may be recast as follows:-

"(e) if he is divested of his power to exercise the vote on behalf of a scheduled bank or insurance company or cooperative society other than a housing society or a housing society."

By-laws 86 and 91.:- Those by-laws are legally in order.

By-laws 134 to 137. - These by-laws are legally in order. By-law 137 is similar to by-law 47 which was approved by the R.L.A. (vide his opinion No. 18026 dated 13-11-53).

Draft by-law referred to in para. 6 of the D.O. note at page 4 ante.- The draft by-law proposed at page 4 ante may be inserted after draft by-law 56-A in the following revised form, namely :-

"Any member of the Society shall be entitled to bring before any ordinary general meeting any special business, if he has given notice of such business and a copy of the resulution proposed to be moved by him to the Secretary at least seven clear days before the day appointed for such meeting."

3. The following further observations are

are made with regard to other provisions in the draft by-laws :-

By-law 2(f).- The definition of co-operative housing society is not necessary in view of the definition of "Housing Society" given in section 3(f) (4) of the Act.

By-law 6. - This by-law may be recast as follows:-

"6. The society may receive from Government a contribution towards its share capital subject to the provisions of section 33A.".

By-law 8. - The cross reference in the proviso to by-law 98 does not fit in. Presumably it is intended to refer to by-law 56, which will have to be deleted for the reasons given below. The proviso may therefore be made self-contained.

By-law 21.- Rule 8 of the Bombay Co-operative Societies Rules, 1927, puts a restriction on incurring liabilities exceeding in total eight times the total amount of paid up share capital, reserve fund and building fund. Unless the society is exempted from the operation of rule 8, the acceptance of deposits will be subject to rule 8.

By-law 22. - In this by-law after the words "which is registered" the words "or deemed to registered under any law for the time being in force" may be inserted. For the word "Government" the words "State Government" should be substituted. This by-law is, however, inconsistent with the provisions of the Bombay Co-operative Societies and Charged Expenditure (Amendment) Bill which has been

has been supplied to the Development Department. The Bill permits membership to companies, banking companies and partnership firms. The membership would not be open to investment trusts and other financial institutions which are not companies, banking companies, firms or co-operative societies. The Act does not specifically provide for admission of Government as a member to any society. The draft Bill, however, provides for the power of Government to contribute towards the share capital of a society.

By-law 23. The words "without prejudice to by-law 6" may be added at the beginning. It is seen from Shri Bhat's letter that Government had undertaken to subscribe 50% of the share capital of the society. It is, therefore, made clear in this by-law that the restriction regarding the holding of 1/5 of the of share capital would not apply to Government

By-law 40 . - It does not appear from the scheme or by-laws that any individual is to be admitted as a member of the Housing Finance Society. If so, by-law 40 which relates to an individual should be deleted.

By-law 51.- Substitute the word 'member' for theword "person".

By-law 56.- The proviso in the proposed by-law is inconsistent with section 13(1) and is therefore not in order. The remaining part of the by-law is redundant in view of the provisions of section 13. The whole by-law may be deleted.

By-law 57.- For the words "so made by the member" the following may be substituted, namely :-

namely:- "made by one-fifth of the member under section 13(1) for calling a special general meeting".

By-law 73- The Board cannot make rules. The qualfications of directors to be elected ought to be specified in the by-laws. The General Body should determine the qualifications and the mode of election by framing by-laws.

By-laws 81 and 83.- The heading appearing before by-law 83 should be "Powers of the Board" and that appearing befor by-law 81 should be "powers of Director".

By-law 92.- As pointed out in R.C.A's opinion No. 18012, dated 13-11-51, the registration of a society renders it a body corporate by the name under which it is registered hand it must sue and be sued in that name. No by-law can be made to alter this position. The proposed by-law is not, therefore in order and should be deleted.

By-law 97.- This by-law is inconstent with rule 26-A which provides for payment of contribution to eduottional fund of the Provincial Covoperative Institute. The by-law is recast accordingly.

By-laws 103 and 104- The Board cannot determine the mode of recovery as the recovery is to be made according to the modes laid down in the Act.

By-law 125.- It may be provided in clause (b) for payment of contribution to the eduoation fund of the Provincial Co-operative Institute under rule 26-A.

By-law 133.- Rule 6 of the rules provides for not less than 2/3 majority, the by-law by

by providing ⅔ majority restricts the scope of rule 6. For the espression "Co-operative housing society" (wherever used in the by-laws, the expression "housing society") should be substituted as that expression has been defined in the Act.

Remembrancer of Legal Affairs.

U.O. to L.A., No. 2064, dated the 21st December 1951.

SSM / 18/7/56.